Rimdaya Sdn Bhd v The Government of the State of Sabah & Anor

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO S-01(NCvC)(A)-554–08 OF 2022
AHMAD ZAIDI IBRAHIM, MOHAMED ZAINI MAZLAN AND ALWI ABDUL WAHAB JJCA
12 SEPTEMBER 2025

Land Law — Acquisition of land — Revocation of acquisition — Section 10A of Land Acquisition Ordinance 1950 ('the LAO') — Whether acquisition of land under s 3 of LAO had been validly revoked — Whether acquisition prior to revocation had remained inchoate as steps to formally transfer ownership of subject land to acquiring party under s 3(3) of LAO had not been done — Whether s 10A LAO allowed Government to revoke acquisition if its intended purpose had ceased to be viable or feasible or if there was change in policy from original purpose of the acquisition

The appellant had filed an originating summons ('OS') in the High Court seeking compensation for the compulsory acquisition of part of its land ('the land') by the State Government for a road project. As required under s 3 of the Land Acquisition Ordinance 1950 ('the LAO'), the first respondent had published two declarations pertaining to the acquisition in the Government *Gazette*. The appellant filed the OS when it failed to receive any response from the respondents with regard to payment of compensation for the acquisition. In response to the OS, the respondents stated that the acquisition had been revoked under s 10A of the LAO. Notice of the revocation was only published in the Government *Gazette* several months after the OS was filed. The issues that arose for determination were: (a) whether the claim for compensation could be defeated by the revocation when s 3(3) of the LAO stated that upon the second publication of the declaration of acquisition in the *Gazette*, the land 'shall, without any conveyance, vest in the Government free from all encumbrances and shall be deemed to have been surrendered by the lawful owner thereof'. The appellants argued that by virtue of s 3(3), the land had already become State land and therefore compensation must be paid; (b) whether s 10A of the LAO violated art 13 of the Federal Constitution; and (c) whether the revocation was invalid as it had only revoked one of the two declarations of acquisition, leaving the other still valid and enforceable. The High Court dismissed the OS after finding that: (i) the revocation of the acquisition was valid as no steps were taken to formally transfer/transmit the land to the acquiring party; (ii) the appellant's constitutional rights had not been infringed; and (iii) the appellant was not entitled to any compensation but only to the remedies provided for in s 10A(3) of the LAO. The instant

A appeal was against the High Court's decision.

Held, unanimously dismissing the appeal:

(1) In the absence of evidence showing that the statutory procedures under s 3(3) of the LAO had been duly complied with, it could not be conclusively said that ownership of the acquired land had vested in the first respondent. Whilst the acquisition order might have been lawfully issued, the completion of the acquisition process required more than the issuance of an order, as it demanded formal registration and endorsement on the relevant land titles to perfect the transfer of ownership. Until such steps were proven to have been taken, the acquisition remained inchoate and did not confer upon the first respondent a legally enforceable title to the land. The High Court's characterisation of the acquisition as being 'merely on paper', though imprecisely expressed, meant that the acquisition process had not been legally completed (see para 22).

(2) Section 10A(1) of the LAO required only one notification to be *gazetted* to revoke an acquisition. The respondents' revocation of the acquisition was thus valid. Consequently, there was no longer any basis for the appellant to seek compensation since there was no longer an acquisition. The appellant was, however, entitled under s 10A(3) of the LAO to claim damages for actual loss or injury suffered arising from the acquisition prior to the revocation if such loss or injury could be proven (see paras 33, 35 & 39).

(3) As s 10A of the LAO did not deal with the acquisition of land but rather the revocation of an acquisition, it did not infringe art 13 of the Federal Constitution and was constitutional (see paras 38 & 40).

(4) The legislative intent behind s 10A of the LAO was to allow the Government to revoke an acquisition when its intended purpose had ceased to be viable or feasible, or if there was a change in policy from the original purpose of the acquisition. Section 10A ensured fairness by restoring ownership of the land to the landowner instead of requiring the Government to pay compensation for land it no longer required (see para 40).

[Bahasa Malaysia summary

Perayu telah memfailkan saman pemula ('SP') di Mahkamah Tinggi untuk menuntut pampasan berhubung pengambilan wajib sebahagian tanah miliknya ('tanah tersebut') oleh Kerajaan Negeri bagi tujuan projek jalan raya. Sepertimana dikehendaki di bawah s 3 Ordinan Pengambilan Tanah 1950 ('OPT'), responden pertama telah menyiarkan dua perisytiharan berkaitan pengambilan tersebut dalam Warta Kerajaan. Perayu memfailkan SP tersebut apabila mereka gagal menerima sebarang maklum balas daripada para responden berhubung pembayaran pampasan bagi pengambilan tersebut.

Sebagai respon kepada SP itu, para responden menyatakan bahawa pengambilan tersebut telah dibatalkan di bawah s 10A OPT. Notis pembatalan hanya disiarkan dalam Warta beberapa bulan selepas SP difailkan. Isu-isu untuk diputuskan ialah: (a) sama ada tuntutan pampasan boleh digugurkan melalui pembatalan apabila s 3(3) OPT memperuntukkan bahawa selepas penyiaran kedua perisytiharan pengambilan dalam Warta, tanah itu 'shall, without any conveyance, vest in the Government free from all encumbrances and shall be deemed to have been surrendered by the lawful owner thereof'. Perayu berhujah bahawa melalui peruntukan tersebut, tanah telah pun menjadi tanah Kerajaan dan oleh itu pampasan mesti dibayar; (b) sama ada s 10A OPT melanggar perkara 13 Perlembagaan Persekutuan; dan (c) sama ada pembatalan tersebut tidak sah kerana ianya hanya membatalkan satu daripada dua perisytiharan pengambilan, menyebabkan perisytiharan yang satu lagi masih berkuat kuasa dan boleh dikuatkuasakan. Mahkamah Tinggi menolak SP tersebut setelah mendapati bahawa: (i) pembatalan pengambilan adalah sah kerana tiada langkah telah diambil untuk memindah/menyerahkan tanah tersebut secara formal kepada pihak yang memperoleh; (ii) hak perlembagaan perayu tidak dicabuli; dan (iii) perayu tidak berhak kepada sebarang pampasan tetapi hanya kepada remedi yang diperuntukkan di bawah s 10A(3) OPT. Rayuan ini adalah terhadap keputusan Mahkamah Tinggi tersebut.

Diputuskan, sebulat suara mengenepikan rayuan:

(1) Ketiadaan keterangan yang menunjukkan bahawa prosedur statutori di bawah s 3(3) OPT telah dipatuhi sepenuhnya menyebabkan pemilikan tanah yang diambil itu tidak dapat diputuskan secara muktamad sebagai telah diberikan kepada responden pertama. Walaupun perintah pengambilan mungkin telah dikeluarkan secara sah, penyempurnaan proses pengambilan memerlukan lebih daripada sekadar pengeluaran perintah; ianya menuntut pendaftaran formal dan endorsmen pada hakmilik-hakmilik tanah berkenaan bagi menyempurnakan pemindahan milik. Sehingga langkah-langkah tersebut dibuktikan telah diambil, pengambilan tersebut kekal belum bermula dan tidak memberikan kepada responden pertama sebarang hak milik yang boleh dikuatkuasakan menurut undang-undang. Penggambaran Mahkamah Tinggi bahawa pengambilan itu 'sekadar di atas kertas', walaupun tidak dinyatakan secara nyata, membawa maksud bahawa proses pengambilan belum disempurnakan menurut undang-undang (lihat perenggan 22).

(2) Seksyen 10A(1) OPT hanya memerlukan satu notis untuk digazetkan bagi membatalkan sesuatu pengambilan. Oleh itu, pembatalan pengambilan oleh para responden adalah sah. Akibatnya, tiada lagi asas bagi perayu menuntut pampasan kerana pengambilan tersebut tidak lagi wujud. Walau bagaimanapun, perayu berhak di bawah s 10A(3) OPT untuk menuntut ganti rugi bagi kerugian sebenar atau kecederaan yang dialami yang berpunca daripada pengambilan sebelum pembatalan,

A sekiranya kerugian atau kecederaan tersebut dapat dibuktikan (lihat perenggan 33, 35 & 39).

(3) Oleh kerana s 10A OPT tidak memperuntukkan tentang pengambilan tanah tetapi hanya mengenai pembatalan sesuatu pengambilan, peruntukan tersebut tidak melanggar perkara 13 Perlembagaan Persekutuan dan adalah sah dari segi perlembagaan (lihat perenggan 38 & 40).

(4) Niat perundangan di sebalik s 10A OPT adalah untuk membolehkan Kerajaan membatalkan sesuatu pengambilan apabila tujuan asal pengambilan tersebut tidak lagi berdaya laksana atau praktikal, atau apabila terdapat perubahan dasar daripada tujuan asal pengambilan. Seksyen 10A memastikan keadilan dengan mengembalikan pemilikan tanah kepada pemilik tanah, dan bukannya mewajibkan Kerajaan membayar pampasan bagi tanah yang tidak lagi diperlukan (lihat perenggan 40).]

Cases referred to

Eastern Euphoria Sdn Bhd v The Government of the State of Sabah & Anor [2023] MLJU 3457; [2023] CLJU 2450, HC (distd)

Legislation referred to

Federal Constitution art 13, 13(2)
Government Proceedings Act 1956 s 29(1)
Land Acquisition Ordinance 1950 ss 3, 3(2), (3), 4, 5, 6, 6(1), 7(1), 10A, 10A(1), (2), (3), 15, 16, 17, 33

Michael Denis Tan (with Wan Kher Ching) (Michael Denis Tan & Co) for the appellant.
Mohd Saifurrazee bin Mohamed @ Hussin (with Calvin Joy) (Sabah State Attorney General's Chambers) for the respondent.

Mohamed Zaini Mazlan JCA:

INTRODUCTION

[1] This appeal is in respect of the dismissal of the appellant's originating summons by the High Court, where the appellant had sought to be compensated by the respondents for the acquisition of part of its land in the district of Kota Kinabalu.

[2] The first respondent's acquisition of the appellant's land was subsequently revoked under s 10A of the Land Acquisition Ordinance 1950. The respondents maintained that there is no provision for the appellant to be compensated under s 10A. One of the critical issues raised by the appellant is

the constitutionality of s 10A, on the basis that it infringes art 13(2) of the Federal Constitution.

FACTS

[3] The appellant is the registered owner of a parcel of land measuring around 16.21 hectares held under Title No CL015669806 at KM 4.5, Jalan Tuan Fuad Stephen, Tanjung Lipat, Teluk Likas, Kampung Likas, Kota Kinabalu ('the appellant's land'). The second respondent is the authorised officer appointed by the Yang di-Pertua Negeri of the first respondent under the Land Acquisition Ordinance 1950 ('the LAO 1950').

[4] The first respondent had under *Gazette* Notification No 51/2020 published on 30 January 2020 ('the first *gazette*') and 6 February 2020 ('the second *gazette*'), compulsorily acquired part of the appellant's land measuring 1.438 hectares ('the acquired land'). This acquisition was done under s 3 of the LAO 1950. The acquisition was for a public purpose, namely to upgrade Jalan Tun Fuad Stephen and to repair the intersections of Persimpangan Bulatan Perkara, Persimpangan Jalan Istiadat, Persimpangan Jalan Pasir and Jalan Sulaman.

[5] After the *gazetting* of the acquisition, the second respondent issued to the appellant a copy of the 'Declaration of Land to be Acquired' and the 'Notice of Acquisition' dated 18 June 2020, respectively, pursuant to ss 3(2) and 7(1) of the LAO 1950. The appellant subsequently through its valuers submitted its claim for compensation to the second respondent in a letter dated 14 July 2020. The appellant's claim for compensation was for RM58,512,220. The appellant however, did not receive any response from the respondents, which led them to file the originating summons on 5 February 2021.

THE APPELLANT'S CASE IN THE HIGH COURT

[6] The reliefs that the appellant sought in their application were in gist as follows:

(a) to be compensated for the acquired land including interests, and for a High Court judge in Sabah, together with two assessors, to assess the compensation payable;

(b) that copies of the documents, particulars and reports to be forwarded by the authorised officer to the judge pursuant to s 15 of the LAO 1950 be supplied to the appellant; and

(c) an inquiry be held and the procedure to be followed, including the number of expert witnesses to be called pursuant to ss 16 and 17 of the LAO 1950.

A **[7]** The originating summons was filed on 5 February 2021, which was within 12 months from the publication of the second *gazette*. This complied with s 33 of the LAO 1950, which stipulated that any compensation claim must be made within twelve months after the declaration of acquisition was made under s 3 of the LAO 1950.

B

[8] The respondents in their affidavit-in-reply stated that the acquisition had been revoked by *Gazette* Notification No 289/2021, published on 23 September 2021 pursuant to s 10A of the LAO 1950 ('the third *gazette*'). The respondents contended that as a result, the appellant is no longer entitled C to any compensation under s 10A. It is noteworthy that the revocation was effected after the appellant had filed the originating summons.

[9] One of the issues before the High Court was whether the appellant's claim for compensation could be defeated under s 10A of the LAO 1950 by D virtue of s 3 of the Ordinance. The appellant contended that the acquisition of the acquired land had been completed and that the acquired land had become State Land after the second *gazette* by virtue of s 3(3), which meant that the appellant had lost their rights to the acquired land, and was therefore entitled to compensation for the acquisition of the acquired land. E

[10] The High Court held that the respondents were entitled to revoke an acquisition and re-alienate the acquired land back to the appellant under ss 10A(1) and (2) of the LAO 1950. The High Court was of the view that the F acquisition was merely on paper as there was no conveyance involved, and that there was no issue of the appellant's constitutional rights being infringed. The High Court also held that s 10A(3) provides remedies for the appellant once the acquisition is revoked.

G **[11]** The other issue raised was the constitutionality of s 10A of the LAO 1950. The appellant contended that the section violates art 13 of the Federal Constitution, which protects the appellant's rights to property, and that these rights could not be taken away without compensation.

H **[12]** The appellant had also contended that s 29(1) of the Government Proceedings Act 1956 prohibits them from seeking the recovery of the acquired land. The High Court agreed with the respondents' submission that the maxim *generalia specialibus non derogant* applies as ss 3 and 10A of the LAO 1950 are specific provisions and therefore prevail over s 29(1). The High Court I concluded that there is no prohibition for the acquired land to be reverted to the appellant. The appellant however did not choose to advance this argument in this appeal.

[13] The final issue dealt with by the High Court was the appellant's

contention that the third *gazette* had only revoked the first *gazette* and that the second *gazette* was still valid and enforceable. The High Court, in dismissing this argument, held that s 10A(1) of the LAO 1950 only requires one notification in the *gazette* for the purpose of revoking an acquisition. The appellant's originating summons was subsequently dismissed with no order as to costs.

THE APPEAL

[14] The appellant contended that the ownership of the acquired land had already been vested in the first respondent upon the publication of the second *gazette*. The appellant highlighted that the respondents had only published the revocation *gazette* on 23 September 2021, which was well after the second *gazette* and the deadline for the appellant to claim compensation under the LAO 1950. The appellant submitted that the High Court erred in deciding that the acquisition of the land was 'merely on paper', as there was no conveyance, as s 3(3) of the LAO 1950 states that the vesting of the land acquired is without conveyance and shall be deemed effected and completed upon the publication of the second *gazette*. This acquisition would then entitle the appellant to be compensated pursuant to s 6 of the LAO 1950.

[15] The appellant also took issue with the High Court's failure to hold that s 10A of the LAO 1950 is unconstitutional. The appellant contended that s 10A infringes art 13(2) of the Federal Constitution, which states that 'No law shall provide for the compulsory acquisition or use of property without adequate compensation'.

[16] The appellant referred to the Sabah High Court case of *Eastern Euphoria Sdn Bhd v The Government of the State of Sabah & Anor* [2023] MLJU 3457; [2023] CLJU 2450. This case was decided after the High Court here delivered its decision. Similar to this case, the respondents in the *Eastern Euphoria* case had revoked the acquisition of the applicant's land under s 10A of the LAO 1950. The revocation however, occurred after the parties had entered into a consent order in which the respondents agreed to pay a specified sum to the applicant. The High Court made several findings. First, it held that the consent order binds the respondents until it is set aside, meaning the respondents had to pay the agreed-upon amount. Second, the court held that the respondent had breached the requirements of s 10A of the LAO 1950 by failing to provide any justification for the revocation. Finally, the High Court held that s 10A is unconstitutional as it violates art 13(2) of the Federal Constitution by absolving the State Government from paying adequate compensation for the compulsory acquisition of land.

[17] Premised on the *Eastern Euphoria* case, the appellant contended that the

A High Court failed to uphold the supremacy of the Federal Constitution in failing to recognise that the revocation of the acquisition under s 10A of the LAO 1950 without compensation is unconstitutional, as it deprives the appellant of adequate compensation.

B **[18]** The appellant submitted that their rights for compensation arose once the second *gazette* was published, as ownership of the acquired land had already been vested in the respondent without conveyance. The appellant contended that they lose the right to use the acquired land after the second *gazette* and may lose the right to get rental proceeds or the proceeds of produce for the land.

C

[19] Finally, the appellant submitted that the High Court erred in deciding that s 10A of the LAO 1950 merely requires one notification in the *gazette* to revoke the acquisition. The revocation notice referred only to the first D *gazette* and is therefore insufficient, as it should have referred to both the first and second *gazettes*. The appellant submitted that the acquired land was only vested in the first respondent after the second *gazette* and without the need for any conveyance. The appellant contended that the second respondent should have issued the revocation notice for both *gazettes*, and if not, the second E *gazette*. Since the notice was only for the first *gazette*, the revocation was invalid, meaning the acquired land is still vested in the first respondent.

FINDINGS

F **[20]** We agree with the appellant's contention that the ownership of the acquired land had been vested in the first respondent upon the publication of the second *gazette*. The ownership of the acquired land had indeed been vested in the first respondent upon the publication of the second *gazette*. Section 3 of the LAO 1950 is as follows:

G

ACQUISITION OF LAND AND ABANDONMENT OF ACQUISITION

3 Acquisition of land

(1) If the Yang di-Pertua Negeri considers that any land should be acquired for a H public purpose, he may cause a declaration to that effect to be made in the manner provided by this Section, and the declaration shall be conclusive evidence that the land to which it relates is required for a public purpose.

(2) Every declaration shall be published in two ordinary issues of the gazette and copies thereof shall be posted on one of the buildings (if any) on the land or I exhibited at suitable places in the locality in which the land is situate, and, where possible, be served on the owner of the land and in the declaration shall be specified the following particulars to the land which is to be acquired:

(a) the district in which the land is situated;

(b) a description of the land, giving the approximate area and such other particulars as are necessary to identify the land;

(c) in cases where a plan has been prepared, the place where, and the time when, a plan of the land can be inspected;

(d) the public purpose for which the land is required.

(3) *Upon the second publication of the declaration in the gazette as aforesaid the land and the buildings and erections thereon shall, without any conveyance, vest in the Government free from all encumbrances* and shall be deemed to have been surrendered by the lawful owner thereof and the Director of Lands and Surveys shall take or cause to be taken all such steps as are necessary by way of registering memoranda against the titles to the land affected or otherwise to give effect to such order and every person in possession of any title or copy of title affected by this Section shall produce such title or copy to the Director of Lands and Surveys or, in Labuan, to the Collector of Land Revenue for such purpose.

(4) Notwithstanding the provisions of the preceding subsection, where any buildings upon land vested in the Government under the provisions of such subsection are occupied by any person as a residence or for a trade or business, then possession shall not be demanded by or on behalf of the Government, unless the land in the opinion of the Yang di-Pertua Negeri is urgently required for the public purpose, until after the expiration of three months from the date of the first publication of the declaration made under the provisions of subsection (1), but in such case the owner of the land shall account to the Government for all rents as from the date of vesting or shall allow credit for reasonable rent in any claim for compensation if such owner occupies the building himself.

(5) Nothing in this Ordinance shall be deemed to prevent the acquisition of lands for public purposes and the settlement of any compensation therefor by private treaty. (Emphasis added.)

[21] However, it appears that the High Court may have oversimplified the issue by concluding that the acquisition was 'merely on paper'. What the High Court may have intended to convey is that the process of vesting and transfer of ownership of the acquired land had not been fully completed in accordance with the statutory procedure prescribed under s 3(3) of the LAO 1950. That provision requires the second respondent to take all necessary steps, including the registration of memoranda against the titles, or to take any other action necessary to give effect to the acquisition order. In the present case, there is no evidence to show that these procedural steps were taken, which leaves the acquisition process incomplete in law.

[22] In the absence of evidence demonstrating that the statutory procedures under s 3(3) of the LAO 1950 were duly complied with, it cannot be conclusively said that ownership of the acquired land had vested in the first respondent. While the acquisition order may have been lawfully issued, the completion of the acquisition process requires more than the issuance of an

order, as it demands formal registration and endorsement on the relevant land titles to perfect the transfer of ownership. Until such steps are proven to have been taken, the acquisition remains inchoate and does not confer upon the first respondent a legally enforceable title to the land. The High Court's characterisation of the acquisition as being 'merely on paper', though imprecisely expressed, meant that the acquisition process had not been legally completed.

[23] The appellant's primary argument however, is that they are entitled to be compensated under s 6 of the LAO 1950 once the acquisition of the acquired land has been completed. Section 6 reads as follows:

> 6 Authorised officer to treat with landowner.
>
> (1) As soon as any declaration has been published in accordance with the provisions of section 3, the authorised officer shall, without delay, enter into negotiations (or further negotiations) for the purchase of the land to which the declaration relates upon reasonable terms and conditions, and by voluntary agreement with the owner of the land.
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> (2) It shall not be necessary for the authorised officer to await the publication of the declaration before he endeavours to ascertain from the owner the terms and conditions on which he is willing to sell his land. Still, no negotiations or agreement shall be deemed to be concluded unless and until the Yang di-Pertua Negeri has approved the conditions of sale and acquisition.

[24] It is apparent that the respondents did not take steps to negotiate with the appellant for the purchase of the acquired land, which led to the appellant's application pursuant to s 33 of the LAO 1950, which states as follows:

> 33 Limitation of time for making claims.
>
> Notwithstanding anything contained in any other written law, except with the approval of the Yang di-Pertua Negeri in any case in which he considers that injustice may otherwise be done, *no claim for compensation which may be made under the provisions of this Ordinance shall be admitted or entertained unless the same shall be made within twelve months* after the date on which entry has been made on the land under s 4 *or, if a declaration has been made under section 3, within a similar period after the date of the second publication of such declaration.* (Emphasis added.)

[25] The pertinent issue is whether the respondents are compelled to compensate the appellant based on the appellant's assertion that the acquisition of the land had been completed and the ownership of the land had been vested in the first respondent.

[26] The respondents contended that the acquisition of the acquired land had been legally revoked under s 10A of the LAO 1950, which reads as follows:

10A Revocation of acquisition [c.i.f. 30.03.2012]

(1) The Yang di-Pertua Negeri may, at any time as and when he deems it necessary, by notification published in the gazette, revoke the acquisition of any land which has been acquired compulsorily under Section 3.

(2) Upon the publication of the notification in the gazette, the land and the buildings and erections thereon shall revert to the owner or the person interested in the land, as the case may be, and the Director of the Lands and Surveys shall take or cause to be taken all such steps as are necessary to lawfully revert the land to the owner or the person interested.

(3) Where any acquisition is revoked under subsection (1), any damages for actual loss or injury, if any, suffered by the owner or the person interested, arising by reason of the exercise of the power conferred by Section 3, shall be paid to the owner or the person interested.

(4) No damages shall be payable in any case for loss of bargain or for breach of contract.

[27] Two issues arise from the appellant's submissions regarding the revocation. First, whether the revocation was valid as the revocation notice had only referred to the first *gazette*, and second, whether s 10A of the LAO 1950 is unconstitutional as it does not provide for any compensation to the appellant. We shall address each issue in turn.

[28] For an acquisition of land for a public purpose to be completed, two notices of declaration must be published and *gazetted*. This is the requirement under s 3 of the LAO 1950. Here, the respondents chose to revoke the acquisition rather than abandon it. Section 10 governs the abandonment of an acquisition. However, s 10A, which was inserted in 2012, regulates the revocation of an acquisition. Section 10A(1) confers a broad discretionary power on the Yang di-Pertua Negeri of Sabah to revoke an acquisition 'at any time'. This clearly means that the revocation of acquired land can occur at any time, even after the land has been acquired and some time has elapsed.

[29] The appellant argued that the revocation was invalid as the notice had only referred to the first *gazette*, and submitted that the revocation notice should have referred to the second notice as the ownership of the land had only become vested in the first respondent after the second notice.

[30] While s 3 of the LAO 1950 states explicitly that two notices of acquisition must be issued and *gazetted*, s 10A(1) on the other hand stipulates only one notification. This is apparent from the wording of the Section, which states '... by notification published in the *Gazette*, revoke the acquisition ...', which means that only one notice of revocation is required. The other provisions in the LAO 1950 will state clearly where more than two

notifications are needed. The omission of such a provision in s 10A(1) must be regarded as deliberate.

[31] We must emphasise that s 10A of the LAO 1950 applies to a situation when the revocation is concerning a land that had already been completely acquired pursuant to s 3, whereas s 10 concerns an intended acquisition that has not been completed. Section 10 states as follows:

> 10 Abandonment of acquisition.
>
> (1) *At any time before any land has been acquired compulsorily,* the Yang di-Pertua Negeri may, by notification published in the gazette, declare that the intended acquisition of such land is abandoned.
>
> (2) When the acquisition of any land is abandoned in accordance with the provisions of this section, or is deemed to have been abandoned under section 9, any compensation payable by virtue of this Ordinance shall, in default of agreement, be assessed as though it were compensation payable under this Ordinance for the acquisition of land.
>
> (3) No compensation shall be payable in any case for loss of bargain or for damages for breach of contract. (Emphasis added.)

[32] The provisions of s 10 are therefore applicable to a proposed acquisition that has not been completed under s 3, namely where the second notification has not been *gazetted*, or to proposed acquisitions under ss 4 and 5.

[33] We concur with the High Court's finding that s 10A(1) of the LAO 1950 requires one notification to be *gazetted* to revoke the acquisition. We therefore find that the respondents' revocation of the acquired land is valid. Under s 10A(2), ownership of the acquired land reverts to the appellant. However, it remains unclear whether the respondents had taken any steps pursuant to the second *gazette* to take ownership of the acquired land. The facts suggest they had not, which explains why the High Court had described the acquisition 'was merely on paper'. Nevertheless, suppose the respondents had taken steps to register their ownership of the acquired land. In that case, the second respondent shall take steps that are necessary to revert the acquired land to the appellant. This is clearly stated in s 10A(2).

[34] The second issue is whether the appellant is entitled to be compensated for the price of the acquired land after the acquisition has been revoked. The appellant's claim for compensation is based on their contention that the acquisition of the land had been completed after the second *gazette*, which triggers the obligation under s 6(1) of the LAO 1950, for the authorised officer to, without delay, negotiate for compensation. As the respondents had failed to do so, the appellant was compelled to file the originating summons seeking compensation, as s 33 stipulates that no claim for compensation shall be

admitted or entertained unless the claim is made within twelve months after the date of the second *gazette* under s 3.

[35] As we have held that the respondents' revocation of the acquisition was valid, there is no longer any basis for the appellant to seek compensation. The appellant would only be entitled to seek compensation if the respondents had not revoked the acquisition of the acquired land.

[36] We must now address the issue of whether s 10A of the LAO 1950 is unconstitutional. The appellant contended that s 10A violates art 13(2) of the Federal Constitution, which states that any compulsory acquisition must be compensated. The appellant also sought to rely on the *Eastern Euphoria* case, where the High Court held that s 10A is unconstitutional as it violates art 13(2) of the Constitution by absolving the State Government from paying adequate compensation for the compulsory acquisition of land.

[37] The facts in the *Eastern Euphoria* case differ slightly from the appellant's case. In that case, the parties had already entered into a consent order, and the respondents had sought to resile from their obligation to compensate by revoking the acquisition under s 10A of the LAO 1950. The High Court rightly held that the respondents are bound by the terms of the consent order, until it was set aside.

[38] However, we respectfully disagree with the High Court's finding that s 10A of the LAO 1950 is unconstitutional. Section 10A does not deal with the acquisition of land, but rather with revocation of an acquisition, which is clearly the converse of an acquisition. We agree that s 10A would be unconstitutional if it pertained to the acquisition of land, as the absence of compensation would contravene art 13(3) of the Federal Constitution. Any party that compulsorily acquires land will be obliged to compensate the land owner. However, where the acquisition is revoked, the ownership will revert to its owner, and the question of compensation does not arise.

[39] In this case, since the acquisition has been validly revoked, there is no longer an acquisition to support a claim for compensation. The appellant however is not without remedy, as s 10A(3) of the LAO 1950 expressly provides for damages in respect of actual loss or injury suffered arising from the acquisition prior to the revocation. The appellant is therefore entitled to pursue such damages if it can establish evidence of actual loss or injury.

[40] We are therefore resolute that s 10A of the LAO 1950 is constitutional. The only remedy available for the appellant is to seek damages, if at all suffered and not compensation. It must be pointed out that the legislative intent behind s 10A of the LAO 1950 is to allow the Government to revoke an acquisition

A when the intended purpose has ceased to be viable or feasible, or if there was a change in policy from the original purpose of the acquisition. This provision also ensure fairness by restoring ownership of the land to the landowner instead of the Government having to pay compensation for land it no longer requires.

B CONCLUSION

[41] For the reasons set out, the appeal is dismissed with costs of RM15,000.

Appeal dismissed.

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Reported by Ashok Kumar

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